

## **SCR CHAPTER 40**

### **ADMISSION TO THE BAR**

JUDICIAL COUNCIL COMMITTEE'S NOTE, 1979: The following rules govern admissions to the state bar of Wisconsin. SCR 40.02 and 40.03 are sections 757.28 and 757.282 of the 1977 Wisconsin Statutes. SCR 40.01 and 40.04 to 40.14 were originally adopted by the supreme court on June 3, 1940, effective June 3, 1940. They were amended on January 11, 1960; March 8, 1966; December 5, 1968; May 3, 1971, and May 24, 1971. The rules were originally numbered I to XIII and have been clarified and numbered SCR 40.01 and 40.04 to 40.14 for uniformity and convenience. Former rule XII relating to exemption to these rules has been repealed as it was applicable to applicants for admission to the bar by examination who received an acceptable law degree by 1971. SCR 40.15 was derived from section 757.29(1), 1977 stats. SCR 40.16 was derived from several rules pertaining to fees.

#### **SCR 40.01 Definitions; list of law schools.**

- (1) In this chapter, unless the context otherwise requires:
  - (a) "Board" means the board of bar examiners.
  - (b) "Clerk" means the clerk of the supreme court.
- (2) The board shall maintain a record of all law schools which are approved by the American bar association, together with the date of such approval, and those which are not so approved. The record shall constitute an official record of the supreme court and proof of the fact that the law schools therein stated as approved by the American bar association were so approved at the times therein stated.

#### **SCR 40.02 Qualifications generally.**

A person who meets all of the following qualifications shall be admitted to practice law in this state by order of the supreme court:

- (1) Has attained the age of majority under the law of this state.
- (2) Satisfies the legal competence requirements by diploma privilege (SCR 40.03), bar examination (SCR 40.04) or proof of practice elsewhere (SCR 40.05).
- (3) Satisfies the character and fitness requirements set forth in SCR 40.06.
- (4) Takes the oath or affirmation prescribed in SCR 40.15 in open court before the supreme court or a justice thereof or before a member of the highest court of another jurisdiction or a person authorized by that jurisdiction to administer the attorney's oath for bar

admission there or before a judge of the U.S. District Court or Court of Appeals or a justice of the U.S. Supreme Court.

(5) Subscribes the roll of attorneys maintained by the clerk of the supreme court or has his or her name entered thereon by the clerk.

**SCR 40.03 Legal competence requirement: Diploma privilege.** An applicant who has been awarded a first professional degree in law from a law school in this state that is fully, not provisionally, approved by the American bar association shall satisfy the legal competence requirement by presenting to the clerk certification of the board showing:

(1) Satisfactory completion of legal studies leading to the first professional degree in law. The law school shall certify to the board satisfactory completion of not less than 84 semester credits earned by the applicant for purposes of the degree awarded.

(2) Satisfactory completion of study in mandatory and elective subject matter areas. The law school shall certify to the board satisfactory completion of not less than 60 semester credits in the mandatory and elective subject matter areas as provided in (a) and (b). All semester credits so certified shall have been earned in regular law school courses having as their primary and direct purpose the study of rules and principles of substantive and procedural law as they may arise in the courts and administrative agencies of the United States and this state.

(a) *Elective subject matter areas; 60-credit rule.*

Not less than 60 semester credits shall have been earned in regular law school courses in the subject matter areas generally known as: Administrative law, appellate practice and procedure, commercial transactions, conflict of laws, constitutional law, contracts, corporations, creditors' rights, criminal law and procedure, damages, domestic relations, equity, evidence, future interests, insurance, jurisdiction of courts, legislation, labor law, ethics and legal responsibilities of the profession, partnership, personal property, pleading and practice, public utilities, quasi-contracts, real property, taxation, torts, trade regulation, trusts, and wills and estates. The 60-credit subject matter requirement may be satisfied by combinations of the curricular offerings in each approved law school in this state.

(b) *Mandatory subject matter areas; 30-credit rule.*

Not less than 30 of the 60 semester credits shall have been earned in regular law school courses in each of the following subject

matter areas: constitutional law, contracts, criminal law and procedure, evidence, jurisdiction of courts, ethics and legal responsibilities of the legal profession, pleading and practice, real property, torts, and wills and estates.

(c) *Law school certification of subject matter content of curricular offerings.*

Upon the request of the supreme court, the dean of each such law school shall file with the clerk a certified statement setting forth the courses taught in the law school which satisfy the requirements for a first professional degree in law, together with a statement of the percentage of time devoted in each course to the subject matter of the areas of law specified in this rule.

**SCR 40.04 Legal competence requirement: Bar examination.**

(1) An applicant who has been awarded a first professional degree in law from one of the following shall satisfy the legal competence requirement by presenting to the clerk certification of the board that the applicant has passed an examination administered by the board covering all or part of the subject matter areas of law specified in SCR 40.03(2)(a):

(a) A law school that is fully or provisionally approved by the American bar association at the time of the applicant's graduation.

(b) A law school whose graduates are eligible to take the bar examination of the state, territory or District of Columbia in which the law school is located, provided the applicant has passed the bar examination of and has been admitted to practice in that or another state, territory or the District of Columbia.

(2) The board shall administer an examination consisting of the Multistate Bar Examination developed by the National Conference of Bar Examiners, an essay examination developed by the board and such other elements as the board may deem appropriate for the assessment of lawyer competence.

(3) An applicant shall file all application materials and fees with the board by the December 1 preceding the February examination and by the May 1 preceding the July examination except that, on payment of a late fee, application materials and fees shall be filed by the January 1 preceding the February examination and by the June 1 preceding the July examination.

(4) The board, in its discretion, may permit an applicant who

has not yet been awarded a first professional degree in law to take the examination if it is reasonably anticipated that the applicant will receive that degree within 60 days after the examination.

(5) An applicant who has failed the Wisconsin bar examination three times is ineligible to write the Wisconsin bar examination unless special permission is given by the board under such reasonable conditions as it may require.

(6) The board shall provide to each applicant prior to the examination a list of topics taken from the areas of law specified in SCR 40.03(2)(a) from which the essay portion of the examination will be drawn.

(7) The board shall establish the passing score for the bar examination in advance of each examination and shall advise each applicant of the score so established.

(8) An unsuccessful examinee who files a written request with the board within 90 days of mailing of notice by the board of failure of the examination shall be entitled to inspect the examinee's essay examination paper.

**SCR 40.05 Legal competence requirement: Proof of practice elsewhere.**

(1) An applicant shall satisfy the legal competence requirement by presenting to the clerk certification of the board that the applicant has provided all of the following:

(a) Proof of admission to practice law by a court of last resort in any other state or territory or the District of Columbia.

(b) Proof that the applicant has been primarily engaged in the active practice of law in the courts of the United States or another state or territory or the District of Columbia for 3 years within the last 5 years prior to filing application for admission.

(c) If any state, territory or the District of Columbia practice in which is proposed to satisfy the requirement of sub. (b) has, as of the date of the filing of the application, requirements for bar admission in that jurisdiction on the basis of practice in Wisconsin other than those set forth in subs. (a) and (b), proof that the applicant has satisfied those requirements of that state, territory or the District of Columbia.

(1m) Eligibility for admission under this rule shall be limited as follows:

(a) An applicant who proposes to satisfy sub. (1)(b) by practice in a jurisdiction that does not grant bar admission to attorneys licensed

in Wisconsin on the basis of practice in Wisconsin shall not be eligible for admission on proof of practice elsewhere.

(b) An applicant who proposes to satisfy sub. (1)(b) by practice in a jurisdiction that does not grant bar admission on the basis of practice to attorneys licensed in Wisconsin under SCR 40.03 shall not be eligible for admission on proof of practice elsewhere.

(2) Legal service as corporate counsel or trust officer, if conducted in a state where the applicant was admitted to practice law, may be deemed to be the practice of law for the purposes of sub. (1)(b) and (c).

(3) The following activities, whether or not conducted in a state where the applicant was admitted to practice law, may be deemed to be the practice of law for the purposes of sub. (1)(b) and (c):

(a) Service as a judge of a court of record of the United States, any state or territory or the District of Columbia.

(b) Legal service with any local or state government or with the federal government.

(c) Legal service in the armed forces of the United States.

(d) Teaching in any law school approved by the American bar association.

(4) An applicant who has failed the Wisconsin bar examination shall not be eligible for admission on proof of practice elsewhere.

(6) An applicant who satisfies sub. (1)(b) by legal service in the U.S. armed forces is not subject to the limitations under sub. (1)(c).

**SCR 40.06 Requirement as to character and fitness to practice law.**

(1) An applicant for bar admission shall establish good moral character and fitness to practice law. The purpose of this requirement is to limit admission to those applicants found to have the qualities of character and fitness needed to assure to a reasonable degree of certainty the integrity and the competence of services performed for clients and the maintenance of high standards in the administration of justice.

(3) An applicant shall establish to the satisfaction of the board that the applicant satisfies the requirement set forth in sub. (1). The board shall certify to the supreme court the character and fitness of qualifying applicants. The board shall decline to certify the character and fitness of an applicant who knowingly makes a materially false statement of material fact or who fails to disclose a fact necessary to

correct a misapprehension known by the applicant to have arisen in connection with his or her application.

(3m) An applicant for admission under SCR 40.03 shall file an application for a character and fitness certification with the board by a date specified by the board.

(4) The board shall not certify an applicant while an attorney disciplinary matter against the applicant is pending or the applicant is certified by the department of workforce development as delinquent in making court-ordered payments of support or failing to comply with a subpoena or warrant, as those terms are defined in SCR 11.04(1). If an applicant's license to practice law in another jurisdiction is suspended or revoked for reasons related to professional responsibility at the time the application is filed or at any time that the application is pending, the suspension or revocation is a sufficient basis for denial of certification.

(5) The dean of a law school in this state shall have a continuing duty to report to the board any information reflecting adversely upon the character and fitness to practice law of an applicant for bar admission under SCR 40.03.

#### **SCR 40.07 Proof of qualifications.**

The burden of proof shall be on the applicant to establish qualifications under SCR 40.02. Refusal of an applicant to furnish available information or to answer questions relating to the applicant's qualifications shall be deemed a sufficient basis for denial of the certification for admission.

#### **SCR 40.08 Adverse determination.**

(1) Before declining to certify an applicant's satisfaction of requirements under this chapter, the board shall notify the applicant in writing of the basis for its decision and, except as to failure of the bar examination under SCR 40.04, the applicant shall have the opportunity to respond in writing within 20 days of the mailing of notification of the board's decision to the applicant at the last address furnished by the applicant in writing to the board.

(2) The board shall grant a hearing to an applicant only upon a showing that there are facts bearing on the applicant's case that cannot be presented in writing. The board shall not grant a hearing on its decision on waiver under SCR 40.10.

(3) Not less than 30 days prior to the hearing the board shall notify the applicant of the time and place thereof, the issues to be considered and that the applicant may be represented by counsel and

present evidence.

(4) If the determination of the board following a hearing is adverse to the applicant, the board shall mail a copy of the board's findings of facts and conclusions of law to the applicant at the last address furnished by the applicant in writing to the board.

(5) A petition to the supreme court for review of an adverse determination of the board under this rule shall be filed with the clerk within 30 days of the date on which written notice thereof was mailed to the applicant.

**SCR 40.09 Deadline for admission.**

An applicant who fails to complete all requirements for admission as set forth in SCR 40.02 within the following time periods following certification shall not be admitted to the practice of law:

(1) Applicants who qualify for admission pursuant to SCR 40.03: one year following the date of certification by the board pursuant to SCR 40.03 and 40.06.

(2) Applicants who write the bar examination: one year following the date of certification by the board pursuant to SCR 40.04 and 40.06.

(3) Applicants who qualify for admission pursuant to SCR 40.05: one year following the date of certification by the board pursuant to SCR 40.05 and 40.06.

**SCR 40.10 Waiver of requirements.**

Except for the requirements under SCR 40.03, the board may waive any of the requirements of this chapter in exceptional cases and for good cause if failure to waive the requirement would be unjust.

**SCR 40.11 Rulemaking authority.**

The board may promulgate rules necessary to carry out the intent and purpose of this chapter.

**SCR 40.12 Confidentiality.**

The application files of an applicant and all examination materials are confidential. The supreme court or the board may authorize the release of confidential information to other persons or agencies.

**SCR 40.13 Delegation.**

The board may delegate its authority under this chapter to a committee, a member or its director.

**SCR 40.14 Application; fees.**

(1) Application to the supreme court for admission to the bar

shall be filed with the board.

(2) An application is filed on the date a properly executed application and payment of the applicable fees are received at the office of the board during regular business hours.

(3) The following fees are payable to the board:

(a) Bar examination fee	\$450
(b) Late fee for bar examination	\$200
(c) Fee for application for admission on proof of practice elsewhere	\$850
(d) Admission fee	\$100
(e) Fee for reinstatement, readmission, late admission on diploma privilege or late enrollment in the bar	\$200
(f) Application fee for change of name	\$ 25
(g) Fee for a character and fitness investigation under SCR 40.06(3m)	\$210
(h) Late fee for a character and fitness investigation under SCR 40.06(3m)	\$100

#### **SCR 40.15 Attorney's oath.**

The oath or affirmation to be taken to qualify for admission to the practice of law shall be in substantially the following form:

I will support the constitution of the United States and the constitution of the state of Wisconsin;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, or any defense, except such as I believe to be honestly debatable under the law of the land;

I will employ, for the purpose of maintaining the causes confided to me, such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with my client's business except from my client or with my client's knowledge and approval;

I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless



required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice. So help me God.

Amended December 29, 1980, and February 17, 1981; July 1, 1986; September 1, 1988; January 1, 1990; January 1, 1991; May 13, 1991; October 21, 1991; May 7, 1992; December 10, 1992; December 16, 1992; June 14, 1993; December 8, 1993, June 1, 1995, June 5, 1995; November 3, 1995; June 4, 1998; July 28, 1998; April 10, 2001.

## **APPENDIX**

### **Rules of the Board of Bar Examiners**

#### **LEGAL COMPETENCE REQUIREMENT: BAR EXAMINATION**

##### **BA 4.01**

Applicants who otherwise satisfy SCR 40.04 and who have failed the Wisconsin bar examination three times may request special permission to write the bar examination. Special permission may be granted no more than once to an applicant who satisfies the following conditions:

(a) A petition under oath for special permission must be received by the board by the May 1 preceding the July examination and the December 1 preceding the February examination. The petition must set forth a satisfactory supervised study plan, including in detail the preparation to be undertaken, consisting of formal coursework, independent study or a combination thereof; a schedule of hours to be dedicated thereto entailing no less than 160 hours in total; and the name of one or more supervising attorneys licensed to practice law in this state.

(b) The petition must be filed with the application and with all application fees. The Board shall refund the fee if permission to sit is denied.

(c) A written statement under oath averring completion of the study plan proposed pursuant to (a), to which a corroborating statement under oath from the supervising attorney or attorneys is attached, must be received by the board at least seven calendar days prior to the examination.

##### **BA 4.02**

Special testing accommodations must be requested by a writing that is received no later than the first filing deadline (December 1 for the February examination and May 1 for the July examination). The Board will deny requests that are not in writing or that are received after the deadline.

### **BA 4.03**

(a) The Board authorizes its staff to close any bar examination application that remains incomplete six months following the date on which the letter notifying the applicant of his or her passing score is mailed from the Board office.

(b) Staff closure of a file is appealable to the full Board.

## **LEGAL COMPETENCE REQUIREMENT: PROOF OF PRACTICE ELSEWHERE**

### **BA 5.01**

(a) The Board authorizes its staff to close any application for admission on proof of practice elsewhere that remains incomplete one year following the date the application was filed with the Board.

(b) Staff closure of a file is appealable to the full Board.

## **REQUIREMENT AS TO CHARACTER AND FITNESS TO PRACTICE LAW**

### **PREAMBLE**

These rules are adopted in furtherance of SCR 40.06(1), (3), (3m) and SCR 40.07.

### **BA 6.01**

Standard of Character and Fitness. A lawyer should be one whose record of conduct justifies the trust of clients, adversaries, courts and others with respect to the professional duties owed to them. A record manifesting a deficiency in the honesty, diligence or reliability of an applicant may constitute a basis for denial of admission. The Supreme Court Rules place on the applicant the burden of producing information sufficient to affirmatively demonstrate the character and fitness appropriate for bar admission.

### **BA 6.02**

Relevant Conduct. The revelation or discovery of any of the following should be treated as cause for further inquiry before the Board decides whether the applicant possesses the character and fitness to practice law:

- (a) unlawful conduct
- (b) academic misconduct
- (c) false statements by the applicant, including concealment or nondisclosure
- (d) acts involving dishonesty or misrepresentation
- (e) abuse of legal process
- (f) neglect of financial responsibilities
- (g) neglect of professional obligations
- (h) violation of an order of a court
- (i) evidence of mental or emotional impairments
- (j) evidence of drug or alcohol dependency
- (k) denial of admission to the bar in another jurisdiction on character and fitness grounds
- (l) disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction

#### **BA 6.03**

Use of Information. The Board will determine whether the present character and fitness of an applicant qualifies the applicant for admission. In making this determination through the processes described above, the following factors should be considered in assigning weight and significance to prior conduct:

- (a) the applicant's age at the time of the conduct
- (b) the recency of the conduct
- (c) the reliability of the information concerning the conduct
- (d) the seriousness of the conduct
- (e) the mitigating or aggravating circumstances
- (f) the evidence of rehabilitation
- (g) the applicant's candor in the admissions process
- (h) the materiality of any omissions or misrepresentations
- (i) the number of incidents revealing deficiencies

#### **BA 6.04**

The Board shall notify an applicant in writing that it intends to deny his or her application for admission. The notice shall state the reasons for the intended denial and provide an opportunity to request a hearing before the Board. At the time of notice, the Board shall provide the applicant with a copy of the complete packet of information it used in arriving at its decision.

**BA 6.05**

Diploma Privilege. An applicant for admission under diploma privilege shall file an application for a character and fitness certification with the Board. The Board shall establish that the applicant has the qualities of character and fitness needed to practice law and, following certification from the dean of competence under SCR 40.03, shall certify to the Supreme Court the qualifying applicants for admission.

**BA 6.06**

- (a) The Board authorizes its staff to close any application for a character and fitness certification that remains incomplete one year following the date the application was filed with the Board.
- (b) Staff closure of a file is appealable to the full Board.

**WAIVER OF REQUIREMENTS****BA 10.01**

The Board will consider requests for waiver only on receipt of an application and the applicable filing fee. On receipt of the written request for waiver, the Director will make a ruling and issue an appropriate refund of some or all of the filing fee if the request is denied. The applicant may make written request for review of the Director's determination as to waiver. At such time as the applicant requests Board review, the filing fee will become entirely nonrefundable. Board decisions on review will be reported by letter to the applicant.

**APPLICATION; FEES****BA 14.01**

Applications and supporting documentation must be submitted in original form. The Board will not accept facsimile transmissions in satisfaction of its filing requirements.

**BA 14.02**

An application for bar admission, or for a character and fitness

certification pursuant to SCR 40.06(3m), will not be filed unless:

- (a) It is submitted in typewritten form;
- (b) It is accompanied by two properly executed authorization and release forms;
- (c) It is accompanied by filing fees in the proper amount, and, if it is a bar examination application, payment is by certified check or money order; and
- (d) The applicant's signatures on the application and on the authorization and release forms are notarized.

#### **BA 14.03**

Applications are continuing applications during their pendency. Applicants are required to notify the Board in writing of any changes with respect to the information elicited by the application, and each application must accurately reflect the facts throughout the time that the application is processed, including the date on which the applicant is admitted to practice in Wisconsin.

#### **BA 14.04**

Applicants for bar admission on the diploma privilege shall file an application for a character and fitness certification with the Board between the time the student has completed a minimum of 50 credit hours and 30 days after the J.D. is conferred. Payment of a late fee will be assessed to spring graduates who have not filed by December 15, summer graduates who have not filed by March 15, and fall/winter graduates who have not filed by July 15.

#### **BA 14.05**

An application for a character and fitness certification must be filed with the Board at least three months prior to a scheduled law school swearing-in ceremony in order for a diploma privilege applicant to be certified for participation in the large-group swearing-in ceremony.

January 21, 1997; August 22, 2002, August 17, 2004, April 6, 2005.